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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/720,908
Filing Date: March 09, 2001
Appellant(s): LAKSO ET AL.

Travis D. Boone
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 5-5-06 appealing from the Office action mailed 11-2-04.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is substantially correct. It is noted however that in the first sentence, "contains" should have been --contained--.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is substantially correct. It is noted that some of the references to page and line number do not seem to correspond to the description set forth.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

A substantially correct copy of appealed claims 1-7, 16-22, 29-30 and 34-38 appears on pages 1-3 of the Appendix to the appellant's brief. The minor errors are as follows: the claims include parentheticals and also list the claims cancelled not just the claims on appeal.

(8) Evidence Relied Upon

4,232,179	BARROCAS et al	11-1980
5,417,679	TOMS et al	05-1995
94/07941	CARGILL, INC. (PCT)	04-194
5,176,669	KLEMP	01-1993
5,024,672	WIDLUND	06-1991
4,582,550	SIGL	04-1986
4,242,455	MULLER et al	12-1980
4,471,147	OWEN et al	09-1984
4,479,812	HSIA et al	10-1984

Brady, George S., "POLYETYLENES", Materials Handbook, 13th ed., 1991, pp. 651-652.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Language Interpretation

The claim terminology "renewable raw material" is defined as set forth on page 3, lines 5-6 of the entered substitute specification of 6-9-03. Also note lines 6-13 of that same page. With regard to the terminology "component of an absorbent article" note page 5, lines 4-6 and 10-15. With regard to the terminology "component of" the "packaging material" note the paragraph bridging pages 5-6.

Claims 1-7, 16-22, 29-30 and 34-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicants disclosure, Barrocas '179, Toms '679, Cargill '941, Klemp '669, Widlund '672, Sigl '550 and the definition of "polyethylenes", first paragraph, in the Materials Handbook.

Note Claim Language Interpretation section supra. With regard to the claims, see Toms '679 at col. 1, lines 23-27 and col. 11, lines 54-57, Cargill at Description of the Prior Art, Klemp '669 at col. 4, lines 17-35, Widlund '672 at col. 1, lines 43-53, and col. 3, lines 7-13, Sigl '550 at col. 1, lines 54-60 and col. 3, lines 34-48 and the definition of "polyethylenes", first paragraph, which admit that it is known to produce components of absorbent articles, such as liquid impermeable backing sheets, topsheets, waist elastics and fastener devices, i.e. landing strips, or packages from material produced from polyethene, also known as polyethylene, derived wholly or in part from petroleum products, i.e. non-renewable materials. Applicants' disclosure at the paragraph bridging pages 14-15, page 16, first full paragraph, page 17, third full paragraph and page 18, line 10 of the 6-9-03 substitute specification, as well as Toms '679 at col. 9, lines 15-66, Cargill at Description of the Prior Art and the definition of "polyethylenes", first paragraph, admits that manufacture of a film or material, including those of polyethene, components from that film or material, absorbent articles from the components, film or material, alone or with other components, prepacking, manufacture of the prepack or package and methods of manufacture, including those of polyethene, are also known. Applicants' disclosure at page 9, lines 6-17 and page 16, lines 8-17 of the 6-9-03 substitute specification, as well as Barrocas et al '179 at col. 1, lines 4-34, admits it is known to produce ethane from ethanol, a renewable material, and to produce polyethene from such ethane. Therefore, the invention of the claims is

known except for, and as set forth by Applicants at page 9, line 17-page 10, line 4 of the 6-9-03 substitute specification, the use of renewable raw materials rather than non-renewable raw materials in the manufacture of the polyethene used in the field of application, i.e. absorbent articles or packaging materials. This invention as set forth by Applicants at page 3, lines 2-4 of the 6-9-03 substitute specification is more environmental friendly. In other words, the invention is using a known material, i.e. polythene made from renewable materials, and processing it as known to manufacture components in a field of application instead of using the same known material, but such material made from nonrenewable raw materials, and processing it the same to manufacture the same components in that same field of application for the same reason the prior art created the known polyethene material made from renewable materials rather than nonrenewable materials in the first place, i.e. more environmentally friendly. Furthermore, the definition of "polyethylenes", first paragraph, suggests that it is known to use the material polyethylene, i.e. polyethene, in multiple fields of application because the advantages or benefits of such use in one application field also apply in the other application fields. Therefore, from the Applicants admissions as to what is known and the prior art, to use the known polyethene made from renewable materials in the application field of absorbent articles and packages instead of the previously used polyethene made from non-renewable materials would be obvious to one of ordinary skill in the art in view of the recognition that such would also provide the same advantage or benefit of being more environmentally friendly in those application fields.

(10) Response to Argument

Since the claims have been treated as a single group and since claim 1 is the broadest claim of this group, the arguments will be addressed with regard to such claim.

Appellant's comments with respect to the art in Section A. are noted.

Appellant's remarks on page 7, lines 10-20 and page 8, line 11-page 12, line 3 have been noted, i.e. Appellant does not dispute the "allegations".

Appellant's arguments on page 9, line 4-page 10, line 15 and page 12, lines 8-9 have been considered but are deemed not persuasive in that the Examiner never stated the Barrocas et al patent alone that it is known to produce polyethene from ethane[sic] produced from ethanol which ethanol is produced from a renewable source.

Appellant's arguments on page 9, lines 4-7 and page 10, line 10-page 12, line 7 and page 12, line 9 have been considered but are deemed not persuasive in that such arguments, i.e. the use of renewable ethene to produce polyethene, are different in scope than Appellant's full discussion of what the invention is and what the "novelty in the present context resides in" set forth in the paragraph bridging pages 9-10, page 10, lines 11-16 and page 16, second full paragraph of the 6-9-03 specification, i.e. "Polyethene which can be produced from renewable ethane in the aforedescribed manner, is already known in the art. It is also known to produce ethane from ethanol in the manner described above. The novelty in the present context resides in the use of renewable raw materials in the manufacture of polyethene for use in absorbent articles, which according to the invention results in environmentally friendly absorbent articles....". Appellant now further relies on the language of the original specification to support the position

that there was no admission that it was known to produce polyethene from ethene produced from renewable sources. However such reliance is also deemed not persuasive because such language is similar to that of the substitute specification, see discussion thereof supra. Therefore contrary to Appellant's arguments the substitute language ", is already known in the art" and/or the original language ", already known in the art" do not clearly refer to the process of producing polyethylene from nonrenewable sources rather than the process of producing polyethylene from renewable sources. Further evidence that such language referred to the latter process rather than the former process is provided by Muller et al '455 at col. 1, lines 21-25 and 38-58 and col. 3, lines 22-30, Owen et al '147 at col. 1, lines 56-58 and 63-67 and col. 11, lines 34-41 and Hsia et al '812 at col. 1, lines 17-25, all of which patents were issued well before the filing date of the instant application. Such patents illustrate ethanol from renewable sources can be converted to ethylene, i.e. ethene, which ethylene is known to be a substitute chemical feedstock for the manufacture of polyethylene, i.e. polyethene, rather than feedstocks produced from fossil fuels. These three patents have been cited for argument rebuttal purposes only. It is further noted that while Appellant argues that there is no admission that polyethene produced from renewable ethene, i.e. the presently claimed invention, is known, claim 1 merely claims producing polyethene from renewable raw material not renewable ethene. Note also the originally filed claims 1, 8, 15 and 16, e.g. "renewable raw material", "preferably from ethene produced from ethanol", "preferably ethanol".

Appellant's arguments on page 12, line 10-page 14, line 5 have been considered but are deemed not persuasive for the same reasons as put forth in the preceding paragraphs with respect to "allegation" 3.

Appellant's remarks on page 14, line 6-page 16, line 5 have been considered but are deemed not persuasive because such arguments are narrower than the claim language of claim 1 which does not require the component be formed solely of polyethene and thereby such component could include other additions.

Therefore, the Grounds of Rejection set forth in Section 10) supra are deemed proper and maintained.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

K. M. Reichle
July 13, 2006

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